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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,207	04/21/2004	Horace Tjakra	45499-00005	9031

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SQUIRE, SANDERS & DEMPSEY
ONE MARITIME PLAZA
SUITE 300
SAN FRANCISCO, CA 94111-3492

EXAMINER

FONSECA, JESSIE T

ART UNIT	PAPER NUMBER
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3637

MAIL DATE	DELIVERY MODE
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07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/830,207	Applicant(s) TJAKRA, HORACE	
	Examiner Jessie Fonseca	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-9 have been examined.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "one of the sections having thicker wall than the other" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There's no disclosure, either written or shown, for one of the sections having a thicker wall than the other section. Applicant cited page 3, [0019], last two lines for support. However, there is no reference to "thicker walls".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 7, and 9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to claim 9: It's unclear how one of the sections can be thicker than other, as this would create a wall structure subject to collapse due to the glass blocks not being properly balanced on the rigid spacer. Clarification is required.

With regards to claims 5, 7, and 9: It's improper to recite the "steps or ridges" in the alternative, when they refer to the same element. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 7, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wirkus et al. (US 5,845,443) in view of Alcazar (US Des. 323, 896).

Regarding claim 1: Wirkus discloses a spacer (25) (fig. 8) comprising:

Plurality of projections (a, b) that extend outward from the profile of the spacer (25) (fig. 8 and col. 3, lines 31-34);

Wirkus does not explicitly disclose a rigid spacer having a cross-sectional profile in the shape of opposing tear-drop shaped section, each section having a hollow tear-drop shaped interior. However, Alcazar discloses a rigid spacer having a cross-sectional profile in the shape of opposing tear-drop shaped section, each section having a hollow tear-drop shaped interior (claim 1; fig. 1; and 3). Therefore, It would have been obvious to one of ordinary skill in the art at time of invention to make the spacer of

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Wirkus a rigid spacer having a cross-sectional profile in the shape of opposing tear-drop shaped section, each section having a hollow tear-drop shaped interior as taught by Alcazar in order to provide a spacer that can maintain it's form under load, where the shape of the spacer corresponds to the edges of a glass block.

Regarding claim 5: Wirkus, in view of Alcazar, further discloses a plurality of projections that are ridges (b) (fig. 8).

Regarding claim 7: Wirkus, in view of Alcazar, further discloses a plurality of projections that are ridges (b) and pointed projections (a) (fig. 8).

Regarding claim 8: The plurality of projections found on the spacer of Wirkus et al., modified by Alcazar, would obviously result in an increase in the surface area of the spacer, which is capable of being exposed to an adhesive.

Regarding claim 9: Wirkus, in view of Alcazar, further discloses an elongated spacer comprising a plurality of projections (a, b) shaped as ridges (b) or pointed (a) projections that extend outward from the profile of the spacer (fig. 8 and col. 3, lines 31-34). Wirkus, in view of Alcazar, further discloses the sections having varying walls thicknesses from one another, where one of the sections has a portion (c) that is thicker than the portion (d) of the other section (fig. 8).

Wirkus does not show the elongated spacer having a teardrop shaped in cross section. However, Alcazar shows an elongated spacer having a cross-section profile in the shape of opposing teardrop sections (fig. 1). The teardrop section consists of one end having a bulbous shape and tapering to a point on the other end. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to

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make Wirkus' spacer have a teardrop shaped cross section as taught by Alcazar in order to have a shape that corresponds with edges of a glass block.

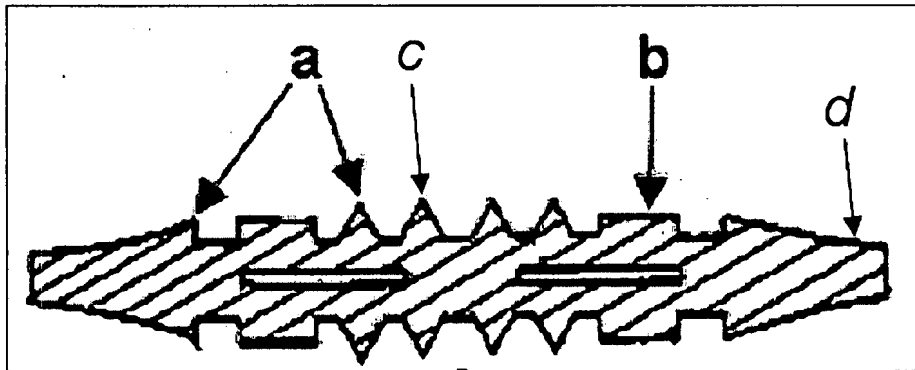


Figure 8: Wirkus et al. (US 5,845,443)

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wirkus et al. (5,845,443) in view of Alcazar (US Des. 323, 896), and in further view of Sholton (US 5,485,702).

Wirkus et al., modified by Alcazar, does not explicitly disclose a rigid spacer formed by extruding polyvinyl chloride (PVC). However, Sholton discloses a spacer made of rigid PVC by an extrusion process (col. 5, lines 37-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the spacer of Wirkus, previously modified by Alcazar, to form a spacer made out of PVC in order to provide a structure that is rigid and lightweight as taught by Sholton.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wirkus et al. (US 5,845,443) in view of Alcazar (US Des. 323, 896), and in further view of Waterhouse (US 5,992,111).

Wirkus et al., modified by Alcazar, does not explicitly disclose a rigid spacer formed from aluminum. However, Waterhouse discloses a rigid spacer made of aluminum (col. 1, lines 17-20 and col.3, lines 16-20). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the spacer of Wirkus, previously modified by Alcazar, to form a spacer made out of aluminum in order to provide a structure that is strong and lightweight as taught by Waterhouse.

Response to Arguments

Applicant's arguments filed 6/18/07 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., central wall) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to the applicant's arguments that Alcazar's joint lacks "sections", the examiner disagrees. As seen in fig. 1 and 3 of Alcazar, two teardrop sections are clearly defined. A section does not necessarily have to be separated by a barrier (ie. central wall), as any portion of a structure is considered a section.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the applicants arguments that neither of the references suggest or teach a rigid spacer, the examiner disagrees. In order to further clarify the rejection of the Prior Office Action, applicant is directed to the sole claim in Alcazar '896.

The objection of the specification and claim 1, 5, and 7 are withdrawn in view of the amendment filed 4/19/07.

The rejection of claims 5-7, and 9 under 35 USC 112, 1st paragraph, is withdrawn in view of the amendment filed 4/19/07.

The rejection of claims 1-8 under 35 USC 112, 2nd paragraph, is withdrawn in view of the amendment filed 4/19/07.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessie Fonseca whose telephone number is (571)272-7195. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JF JF
7/5/07

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